

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARK BRINKLEY	:	CRIMINAL
	:	
v.	:	
	:	
UNITED STATES OF AMERICA	:	NO. 95-254

MEMORANDUM AND ORDER

AND NOW, this 20th day of December, 2004, upon consideration of defendant's motion for reconsideration of this court's September 22, 2004, order (Doc. No. 111), and the government's response thereto, the court makes the following findings and conclusions:

1. On November 17, 1995, the defendant, Mark Brinkley ("Brinkley"), was found guilty of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). On July 23, 1998, Brinkley filed a motion pursuant to 28 U.S.C. § 2255 alleging that his attorney was ineffective. (Doc. No. 77). That motion was denied on August 14, 2001. (Doc. No. 98). On October 12, 2001, this court denied Brinkley's request for a certificate of appealability. (Doc. No. 103).

2. On May 26, 2004, Brinkley filed a *pro se* motion to compel the government to produce a copy of the grand jury transcript alleging that "[t]he government with-held [sic] vital information, that was quite pertinent to petitioners [sic] defense, which, was in the form of perjurious testimony given to the grand jurors during the grand jury proceeding" "in total violation of Brady v. Maryland, 373 U.S. 83, 87 (1963)." (Doc. No. 105).

3. On September 22, 2004, this court denied Brinkley's motion finding that it was a second or successive motion for relief pursuant to 28 U.S.C. § 2255 and that the relief sought was subject to the terms of the Antiterrorism and Effective Death Penalty Act of 1966. (Doc. No. 110). As a result, pursuant to 28 U.S.C. § 2244, Brinkley is required to seek permission from the Court of Appeals in order to file his motion, which Brinkley has not done. (Id.).

4. On October 18, 2004, Brinkley filed the instant *pro se* motion for reconsideration of the September 22, 2004, order.

5. A motion for reconsideration may be filed in a criminal case. U.S. v. Fiorelli, 337 F.3d 282, 286 (3d Cir. 2003). However, a motion for reconsideration is appropriate only where: (1) there has been an intervening change in controlling law; (2) new evidence is available; or (3) there is need to correct a clear error of law or prevent manifest injustice. N. River Ins. Co. v.

Cigna Reinsurance Co., 52 F.3d 1194, 1218 (3rd Cir. 1995); Fed. R. Civ. P. 59(e); Loc. R. Civ. P. 7.1(g). Moreover, such motions should be granted sparingly. Continental Casualty Co. v. Diversified Indus. Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995).

6. In his motion for reconsideration, Brinkley argues that his May 26, 2004, motion was not filed pursuant to 28 U.S.C. § 2255 and that his motion was in fact “not an intended motion of any sort” but was simply a letter request for the transcript. As a result, Brinkley appears to contend that his motion for reconsideration is needed in order to correct a clear error of law or prevent manifest injustice.

7. Brinkley contends that his motion was not really a motion. This argument is disingenuous. The document bears the case caption, was filed with the Clerk of Court and served on the government, and the word motion appears twice in the document’s title and once in the proof of service section.

8. Whether considered a letter request or a motion, Brinkley’s request is clearly within 28 U.S.C. § 2255 as it is a post-verdict claim premised upon an alleged Brady violation. Because Brinkley has not sought or secured permission from the Court of Appeals to file a second or successive § 2255 motion, his motion must be denied. See 28 U.S.C. § 2244.

Accordingly, it is hereby **ORDERED** that motion for reconsideration filed by Brinkley is **DENIED**. This Court has no basis upon which to issue a certificate of appealability.

LOWELL A. REED, JR., S.J.